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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-693

HONORABLE HUBERT L. WILL, Judge, United States District Court for the Northern District of Illinois

Petitioner,

v.

CALVERT FIRE INSURANCE COMPANY,

Respondent,

and

AMERICAN MUTUAL REINSURANCE COMPANY,

Respondent,

On a Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY BRIEF FOR PETITIONER

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1. The Brief in Opposition admits that the issue is whether this Court's decision in *Colorado River Water Conservation District* v. *United States*, 424 U.S. 800 (1976), deprived district judges of all discretion to arrange their calendars to avoid duplication and otherwise manage the disposition of their cases in the interest of economy and efficiency. It states:

> "The lower court correctly concluded that *Colorado River* required it to overrule its decision in *Aetna State Bank* v. *Altheimer*, 430 F.2d 750 (1970)." Brief in Opposition at 5.

As explained in the petition, *Aetna* was the Seventh Circuit's statement of the rule of *Landis* v. *North American Co.*, 299 U.S. 248, 254-55 (1936), that

> "the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance."

2. Plainly this issue is of transcendent importance. As explained in the petition at 15-16, the rule of *Landis* has provided the overburdened federal courts with the discretion necessary to discourage duplicative litigation, and to defer deciding questions that may ultimately become moot. The decision below, purportedly based on a decision of this Court, will encourage litigants nationwide to bring lawsuits (including Rule 10b-5 lawsuits) simultaneously in two courts to secure two adjudications. The additional burden on federal judges of such duplicative litigation would be enormous, and the ultimate result would be to delay justice for those litigants who have no alternative state court in which to try the identical issues.[1]

3. Calvert's suggestion that *Colorado River* overruled the power of district courts over their own calendars set forth in *Landis* v. *North American Co.* is so difficult to sustain that Calvert avoids any discussion of *Landis* whatever.[2] In fact, far

[1] While Calvert contends that its "aim throughout has been the securing of a federal forum for determination of a question of federal law," it admittedly chose not to remove the state case to federal court on diversity grounds. Brief in Opposition at 2. Apparently, Calvert wanted a federal forum to decide only technical questions under the securities laws, not the underlying issue of whether it had been misled into joining the reinsurance pool, an issue certainly open to decision in the state court.

[2] The temptation to deal with *Landis*, the principal authority relied upon in the petition, must have been very great, because Calvert listed the case in its Table of Authorities at the front of its brief (at ii). Nevertheless, the temptation was finally resisted and no mention of the case appears anywhere in the body of the Brief in Opposition.

from overruling *Landis* as claimed, *Colorado River* cited *Landis* as authority. *See* 424 U.S. at 817, 819. As the dissenting *Colorado River* justices made very clear, that case *extended* the principle of *Landis*, applying it not only to stay orders but even to final dismissals of federal actions, where federal jurisdiction was conceded.[3]

4. As explained in the petition, however, it is irrelevant whether or not Judge Will would have been justified in dismissing Calvert's complaint under *Colorado River*. Calvert's federal case was not dismissed; Judge Will merely decided to postpone resolution of an issue that might become entirely moot as a result of prior pending state court litigation between the identical parties raising the identical legal and factual issues. Calvert's right to a federal forum to decide any issues that could not be resolved in the state litigation has not been denied, but merely postponed to avoid simultaneous duplicative litigation in state and federal courts between the same parties.

[3] Despite Calvert's assertion that "the petition would have this Court overrule a landmark decision [*Colorado River*] that is not yet two years old," Brief in Opposition at 7, our petition requests not that *Colorado River* should be overruled, but that the decision below should be reversed summarily as inconsistent with *Colorado River*, and that a landmark decision over forty years old, *Landis* v. *North American Co.*, should be sustained.

The decision below concededly takes away from judges of the district court discretion to order their calendars so they are not mere pawns of litigants seeking presumed advantage from duplicative litigation in two court systems. If not promptly reversed, it will have the undesirable nationwide consequences pointed out in our petition. It should be summarily reversed.

Respectfully submitted,

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